

## **Disclaimer for the Model Municipal Land Conservation Ordinance**

The intent of the editors of this model ordinance was to produce a "clean" ordinance that gives cities and towns a great deal of operational and fiscal flexibility. However, this model ordinance is provided here only for review, reference, and example purposes. It does not constitute a legal document or the provision of legal advice. For this document to be valid and legally enforceable it must be modified, reviewed, and approved by a municipal council and a city attorney or other legal counsel. Many of the provisions in this document are required while others are optional. All guidance and authority for what cities must and may include in their ordinance is conferred by Chapter 160A of the North Carolina General Statutes generally, and North Carolina General Statutes §§160A 401 through 407, §§106-735 through 744 (the Agricultural Development and Farmland Preservation Enabling Act), and §§121-34 through 42 (the Conservation and Historic Preservation Agreements Act). Please refer to the **Notes** section of this document, which offers guidance on this model ordinance. Copies of land conservation program ordinances currently in effect or that are being proposed may be found on the ncordinances page of this website. The following is a link to the ncordinances: <<http://www.cals.ncsu.edu/wq/lpn/ncordinances.htm>>. These ordinances are provided for reference and example purposes. Official copies should be obtained from the governmental unit that promulgated the ordinance.

## Notes

### General

The title of this ordinance uses the word ‘conservation’ rather than the word ‘preservation’. Conservation is a broader term that encompasses preservation as well as other activities consistent with the wise use of land for the benefit of both existing and future generations. Aldo Leopold illustrated the difference in the terms in **A Sand County Almanac**, his seminal work on land conservation. Upon acquiring his farm, he began to restore the soil that had been degraded by poor agricultural practices. This is conservation. Preservation would have meant leaving the land in its degraded condition. With certain natural sites, historic properties and archeological sites preservation may be highly appropriate; however, conservation of most lands that will be protected requires active management, including restoration. This is particularly true for conservation of working lands employed in horticulture, forestry and agriculture. Knowledge of that which constitutes best practices for horticulture, forestry and agriculture is constantly changing as scientific advances contribute to improved practices. A successful program to conserve working lands must be sufficiently flexible to change as the definition of what constitutes best practices changes. For example, it may become technically and economically feasible in the future to use rapidly growing forest as a means for reducing green house gases in the atmosphere. A sufficiently flexible working forest conservation easement could accommodate this opportunity and the change in practices required. As a second example, forested buffers can effectively reduce nutrient flows (usually nitrogen and/or phosphorus) into streams. Both research and intuition suggest that the uptake of nutrients, and the concomitant reductions in nutrients deposited in streams, is improved if the forested buffer is relatively young and rapidly growing as opposed to mature and slow growing. Research on forestry practices to maintain rapidly growing forested buffers while avoiding other problems such as damage to stream banks is likely to result in more effective buffers in the future. Again a sufficiently flexible working forest conservation easement could accommodate this opportunity and the change in practices required to maximize improvements in water quality.

### Article I

The term, ‘city’, is used throughout; however, users of this model should substitute the term, e.g., town, village, that is appropriate for their municipality.

### Article V, section (d)

The City, in enacting this Ordinance and executing conservation agreements, shall rely on statutory authority as conferred by Chapter 160A of the North Carolina General Statutes generally, and North Carolina General Statutes §§160A 401 through 407, §§106-735 through 744 (the Agricultural Development and Farmland Preservation Enabling Act), and §§121-34 through 42 (the Conservation and Historic Preservation Agreements Act).

**Article VI, General Provision**

Subject to the Council's discretion, members of the Committee may be compensated for their services or may serve as volunteers. A per diem compensation, if any may be set by the Council, and appropriated to Committee members for their time and contributions. As an alternative, the Council may choose to offer reimbursements to Committee members for any expenses incurred and directly associated with their service to the Program.

**Article VI, section (b)**

Some localities, in addition to the residency requirement, have also required that Committee members be property owners within the municipality. However, the Land Conservation Program benefits all municipal residents and serves purposes beyond those of participating landowners. Thus the City Council may not wish to restrict membership on the Committee to property owners.

**Article VI, section (g)**

The purpose of this provision is to give the City or Town Council discretion to remove members from the committee. The only exception to this discretion is removal of a member for an illegal reason; e.g. race or religion. An attempt to remove a member for an illegal reason could create liability for the City. Any committee member who is removed is eligible for reappointment at any time, as this model ordinance contains no prohibition on reappointment. To give committee members more protection from removal, some ordinances require a unanimous vote for removal.

**Article VI, section (h)**

This section of the ordinance may also include a reference to Robert's Rules of Order or some other guide to procedure.

**Article VII, section (a)**

The Committee shall designate a department or city official to distribute and receive applications on behalf of the municipality and the Committee. For example, this task could be delegated to the Planning Department.

**Article VII, section (f)**

The conservation agreement shall be as short as feasible and meet the format requirements prescribed by the County Register of Deeds so as to reduce filing fees.

**Article VII, section (g)**

Article VII sets forth requirements for consideration of the application itself. A separate set of application approval criteria (not included with this model) will need to be developed by the Committee or its designee. This document should be available to

potential applicants to serve as a guide. The disclaimer in section (g) clarifies that the application itself does not create any property or contractual rights.

### **Article IX**

The following are examples of limitations and restrictions that a municipality may adopt and enforce over property within the Program:

- i. No construction or placing of buildings, dwellings, roads, signs, billboards or other structures on or above the ground;
- ii. No extraction, excavation or removal of loam, peat, gravel, soil, rock or other mineral substance that will alter the surface;
- iii. No dumping or storage of trash, soil, waste, or any other unsightly or offensive materials;
- iv. No removal or destruction of trees, shrubs, or other vegetation; and/or
- v. Any use of the land must not interfere with its ability to predominantly retain the conservation values for which it was selected or harm any other purposes consistent with the conservation agreement.

### **Article X, section (a)**

This article could also contain a provision whereby the county may acquire development rights or land through like kind exchange. It would ultimately be the responsibility of the landowner to ensure that applicable provisions of the Internal Revenue Code are met; however, the City would have to agree to cooperate and might be liable for the failure to keep its agreement.

All termination provisions for perpetual conservation easements must comply with the Internal Revenue Code and IRS regulations as well as the Conservation and Historic Preservation Agreements Act. For landowners who either convey a conservation easement through a donation or a bargain sale, the failure to comply with the Internal Revenue Code and IRS regulation is fatal to any claimed charitable deduction.

In installment sale arrangements, all terms and restrictions of the conservation agreement are effective immediately upon the first payment. To the knowledge of the authors there is no statutory authority in North Carolina for issuance of an instrument in an instrument in the nature of a municipal tax-exempt bond; however, this provision was included in the model in the event that the General Assembly makes such authority available either generally or by local bill. Under a typical arrangement the landowner would receive the principal (i.e., the purchase price of the land) in a lump sum at the end of a period of years; annual payments would be interest only and these interest payments would be free of both federal and state income tax.

### **Article X, section (b)**

The appraiser must be licensed by the North Carolina Appraisal Board. A list of licensed appraisers is available through the North Carolina Appraisal Board. Where the interest

being acquired is for a term, an appraisal will generally not be needed and may be waived. An appraisal serves two primary purposes in this context. First it provides an estimate of value upon which a purchase price may be negotiated if the acquisition involves one of the purchase options. Second it provides the support needed by the landowner who wishes to claim a charitable deduction for an outright donation or a bargain sale. If neither of these reasons apply then the appraisal will typically be waived.

**Article X, section (c)**

This section is not applicable to donations.

The municipality is not bound to accept any of the appraised values acquired in accordance with the provisions of this ordinance, and therefore has the authority to make whatever offer is deemed necessary. If the offer is not accepted, the owner and the City may renegotiate the purchase price.

**SELECTED RESOURCES:**

American Farmland Trust

<http://www.farmland.org/>

The American Farmland Trust maintains a regional office in Graham, North Carolina.

UNC School of Government

<http://ncinfo.iog.unc.edu>

Land Preservation Notebook

<http://www.cals.ncsu.edu/wq/lpn/>

North Carolina Association of County Commissioners

<http://www.ncacc.org>

North Carolina League of Municipalities

<http://www.nclm.org/>

North Carolina Department of Environmental and Natural Resources

<http://www.enr.state.nc.us/>

North Carolina Cooperative Extension

<http://www.ces.ncsu.edu/>

North Carolina Department of Agriculture and Consumer Services

<http://www.agr.state.nc.us/paffairs/farmlandpreservation.htm>

North Carolina Farm Transition Network

<http://www.ncftn.org/>

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